


## Memorandum

To: Honorable Jerome E. Horton, Chairman  
Senator George Runner, Vice Chair  
Honorable Fiona Ma, CPA, Second District  
Honorable Diane L. Harkey, Fourth District  
Honorable Betty T. Yee, State Controller

Date: May 6, 2015

From:   
Randy Ferris  
Chief Counsel

Subject: **Board Meeting, May 28-29, 2015**  
**Chief Counsel Matters - Item J - Rulemaking**  
**Request for Authorization to Publish Proposed Amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 Regarding Innocent Spouse Relief and Other Equitable Relief from Liability**

We recommend and request your authorization to publish proposed amendments to Sales and Use Tax Regulation 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, Special Taxes and Fees Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, and Rules for Tax Appeals Regulations 5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief*, 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and 5242, *Requests for Reconsideration by the Board*. The proposed amendments provide for the filing of one request for innocent spouse relief, the review of that request to determine if either innocent spouse relief or other equitable relief is warranted, and the ability to request reconsideration from the Board if an individual requesting relief is not granted either innocent spouse relief or other equitable relief from all the liabilities in his or her request.

### **Background Regarding Innocent Spouse Relief and Other Equitable Relief**

In 1993, section 6456 was added to the Revenue and Taxation Code (RTC) by Assembly Bill No. 1288 (Stats. 1993, ch. 181) to authorize the Board to prescribe regulations under which a spouse may be relieved of a liability under the Sales and Use Tax Law (RTC, § 6001 et seq.) if:

- The liability is due to an understatement of tax that is attributable to the other spouse;
- The spouse being relieved did not know of and had no reason to know of the understatement; and
- It is inequitable to hold the spouse being relieved liable for the tax attributable to the understatement, taking into account whether the spouse being relieved significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

The Board subsequently adopted Sales and Use Tax Regulation 1705.1 in 1997 to implement, interpret, and make specific RTC section 6456. As relevant here, Regulation 1705.1 requires a spouse to file a “written request for relief” to be considered for innocent spouse relief under section 6456, subdivision (a). Also, Regulation 1705.1 refers to a spouse that has filed such a request as a “claiming spouse” and the other spouse as the “nonclaiming spouse.”

In 2000, subdivision (f) was added to RTC section 6456 by Assembly Bill No. 2898 (Stats. 2000, ch. 1052) to authorize the Board to prescribe regulations under which a spouse may be relieved of a liability for any tax or deficiency for which “innocent spouse relief” is not available under RTC section 6456, subdivision (a). Under RTC section 6456, subdivision (f), such relief may be granted if, after taking into account all the facts and circumstances, the Board determines it is inequitable to hold the spouse liable for the tax or deficiency (or any portion thereof). The Board subsequently added subdivision (h) to Regulation 1705.1 in 2001 to implement RTC section 6456, subdivision (f)’s provisions for other “equitable relief.” As relevant here, Regulation 1705.1, subdivision (h) requires a spouse to file a written request for equitable relief within the applicable statute of limitations to be considered for equitable relief under RTC section 6456, subdivision (f). In addition, in 2006, the name of Regulation 1705.1 was updated to include “Registered Domestic Partners,” and subdivision (j) was added to Regulation 1705.1 to explain that on and after January 1, 2005, registered domestic partners have the same rights to relief under RTC section 6456 and Regulation 1705.1 as spouses.

In 2007, the Board adopted the Rules for Tax Appeals (Cal. Code Regs., tit. 18, § (Reg.) 5000 et seq.) to provide regulations governing the administrative and appellate review processes for all of the tax and fee programs administered by the Board. (Reg. 5000, *Statement of Intent; Title of Division.*) Regulations 5240 through 5242 were included in the Rules for Tax Appeals to provide procedures for the Board’s review of requests for innocent spouse relief and other equitable relief under RTC section 6456.

Regulation 5240 provides for the filing of a request for innocent spouse relief with the Board’s Offer in Compromise Section. Subdivisions (a) through (c) of Regulation 5241 provide for the acknowledgement, review, and grant or denial of a request for innocent spouse relief by the Offer in Compromise Section. If a request for innocent spouse relief is denied and it appears the individual who requested innocent spouse relief may be eligible for other equitable relief, then subdivisions (c) and (d) of Regulation 5241 also provide for the Offer in Compromise Section to:

- Send the individual a questionnaire and financial statement to complete and return to request other equitable relief; and
- Review the individual’s completed questionnaire and financial statement to determine if other equitable relief is warranted.

Regulation 5242 provides that if a request for other equitable relief is denied, then the individual requesting relief may request that the denial be reconsidered by the Board at a Board hearing.



The Legislature has also authorized the Board to prescribe regulations providing for innocent spouse relief and other equitable relief from liabilities imposed under the Motor Vehicle Fuel Tax Law (RTC, § 7657.5), Use Fuel Tax Law (RTC, § 8880), Private Railroad Car Tax Law (RTC, § 11408.5), Cigarette and Tobacco Products Tax Law (RTC, § 30285), Alcoholic Beverage Tax Law (RTC, § 32258), Timber Yield Tax Law (RTC, § 38454.5), Energy Resources Surcharge Law (RTC, § 40105), Emergency Telephone Users Surcharge Law (RTC, § 41099), Hazardous Substances Tax Law (RTC, §§ 43159.1, 43159.2), Integrated Waste Management Fee Law (RTC, § 45158), Oil Spill Response, Prevention and Administration Fees Law (RTC, § 46159), Underground Storage Tank Maintenance Fee Law (RTC, § 50112.6), Fee Collection Procedures Law (RTC, § 55045.1), and Diesel Fuel Tax Law (RTC, § 60210.5). The Board adopted Special Taxes and Fees Regulation 4903 in 2010 to implement, interpret, and make specific its authority to grant innocent spouse relief and other equitable relief under these additional tax and fee laws. Regulation 4903 generally incorporates the same provisions as Sales and Use Tax Regulation 1705.1, including provisions regarding registered domestic partners. As relevant here, Regulation 4903 requires a spouse to file a “written request for relief” to be considered for innocent spouse relief, and it refers to a spouse that has filed such a request as a “claiming spouse” and the other spouse as the “nonclaiming spouse.” Regulation 4903 also requires a spouse to file a written request for equitable relief within the applicable statute of limitations to be considered for equitable relief.

In 2013, the Board adopted amendments to make Rules for Tax Appeals Regulations 5240 through 5242 applicable to the filing and review of requests for innocent spouse relief and other equitable relief governed by Regulation 4903, except requests filed under the Private Railroad Car Tax. This is because Regulations 5240 through 5242 are contained in chapter 2 of the Rules for Tax Appeals, which does not apply to Private Railroad Car Tax appeals. Currently, Regulations 5240 through 5242 contain cross references to specific subdivisions in Regulations 1705.1 and 4903.

### **Staff's Recommended Amendments**

Once a spouse files a request for innocent spouse relief or other equitable relief from a specific tax or fee liability, the Offer in Compromise Section must determine whether it is “inequitable” to hold that spouse liable for such amount under the applicable facts and circumstances. As a result, Board staff has determined that it would be more efficient for taxpayers if they could file one request for relief in order to be considered for both innocent spouse relief and other equitable relief, instead of filing separate requests for innocent spouse relief and other equitable relief. Board staff has also determined that it would be more efficient for the Board if the Offer in Compromise Section could review one request for relief and determine whether the filing spouse is eligible for either innocent spouse relief or other equitable relief at the same time. Therefore, Board staff recommends that the Board:

- Amend Regulations 1705.1 and 4903 so that they no longer require a spouse to file a separate request for equitable relief;
- Amend Regulations 1705.1, 4903, and 5241 so that they require the Board to consider a spouse who files a request for innocent spouse relief for both innocent spouse relief and other equitable relief;

- Amend Regulation 5241 so that it requires the Offer in Compromise Section to send a spouse a “questionnaire and financial statement to complete and return” with the letter acknowledging his or her request for innocent spouse relief so that the Offer in Compromise Section can still obtain the information needed to determine whether other equitable relief is warranted; and
- Amend Regulation 5242 so that a spouse can request reconsideration from the Board if the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief.

In addition, spouses file “requests,” not claims, for innocent spouse relief under Regulations 1705.1, 4903, and 5240, and Regulation 5241 currently uses the semantically correct phrase “non-requesting spouse” to refer to the spouse of an individual who is requesting innocent spouse relief. Therefore, Board staff recommends replacing all of Regulations 1705.1’s and 4903’s references to “claims,” “claiming spouse,” and “nonclaiming spouse” with references to “requests,” “requesting spouse,” and “non-requesting spouse,” respectively, so that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology.

Moreover, Board staff recommends that the Board make minor grammatical and formatting changes to renumbered subdivisions (g) and (h) in Regulations 1705.1 and 4903. Board staff also recommends that the Board delete the cross-references to specific subdivisions in Regulation 1705.1 and 4903 from Regulations 5240 and 5242 because the specific subdivisions have been renumbered and it is not necessary to specifically refer to the subdivisions to understand the meaning of Regulations 5240’s and 5242’s cross-references to Regulations 1705.1 and 4903. Board staff further recommends that the Board added an inadvertently omitted “s” to the end of Oil Spill Response, Prevention and Administration “Fee” in Regulation 5240, subdivision (a). Board staff additionally recommends revising the reference to Regulation 5241, subdivision (d) present in subdivision (c) of Regulation 5242 so that it refers to Regulation 5241, subdivision (c). Finally, Board staff recommends revising Regulation 5241, subdivision (c) to refer to the instructions for reconsideration that will be provided in the event a request is initially denied.

## **Summary**

Board staff has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242, illustrated in Attachments A through E and discussed above, are necessary to efficiently administer the RTC provisions for innocent spouse relief and other equitable relief, cited above, by providing for the filing of one request for innocent spouse relief, the review of that request to determine if either innocent spouse relief or other equitable relief is warranted, and the ability to request reconsideration from the Board if an individual requesting relief is not granted either innocent spouse relief or other equitable relief from all the liabilities in his or her request.



If you need more information or have any questions, please contact Tax Counsel IV Bradley Heller at (916) 323-3091.

Approved:

  
Cynthia Bridges  
Executive Director

RF:bmh:hp

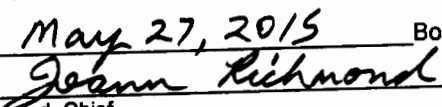
Attachments: Attachment A – Proposed Amendments to Regulation 1705.1  
Attachment B – Proposed Amendments to Regulation 4903  
Attachment C – Proposed Amendments to Regulation 5240  
Attachment D – Proposed Amendments to Regulation 5241  
Attachment E – Proposed Amendments to Regulation 5242

cc: Ms. Cynthia Bridges MIC:73  
Ms. Amy Kelly MIC:82  
Mr. Robert Tucker MIC:82  
Mr. Bradley Heller MIC:82

**STATE BOARD OF EQUALIZATION**



BOARD APPROVED

At the May 27, 2015 Board Meeting  
  
Joann Richmond, Chief  
Board Proceedings Division

Attachment A

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 1705.1

**1705.1. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

(a) In General. A spouse ~~claiming~~ may request innocent spouse relief from liability for any sales or use tax, interest, penalties, and other amounts. A requesting spouse shall be relieved from such liability where all of the following requirements are met:

- (1) A liability is incurred under the Sales and Use Tax Law;
- (2) The liability is attributable to the non-requesting~~nonclaiming~~ spouse;
- (3) The spouse ~~claiming~~requesting relief establishes that he or she did not know of, and that a reasonably prudent person in the requesting~~claiming~~ spouse's circumstances would not have had reason to know of, the liability; and
- (4) It would be inequitable to hold the requesting~~claiming~~ spouse liable for the liability, taking into account whether the requesting~~claiming~~ spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

(b) "Benefited." Whether a requesting~~claiming~~ spouse has benefited directly or indirectly from the liability will be determined by a review by the Board of all of the available evidence. Normal support payment is not a significant benefit for purposes of this determination. Normal support is measured relative to each family's standard of living. The requesting~~claiming~~ spouse will not be deemed to have benefited directly or indirectly from the liability solely as a result of normal support unless his or her lifestyle significantly improved during the periods of liability. Gifts received by the requesting~~claiming~~ spouse, or lavish or luxury purchases made by either spouse may be evidence that the requesting~~claiming~~ spouse benefited directly or indirectly from the liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the liability occurred. For example, if a requesting~~claiming~~ spouse receives from the other spouse an inheritance of property or life insurance proceeds which are traceable to the liability, the requesting~~claiming~~ spouse will be considered to have benefited from that liability. Other factors considered may include desertion of the requesting~~claiming~~ spouse by the other spouse or that the spouses have become divorced or separated subsequent to the periods of liability.

(c) Attribution. The determination of the spouse to whom items of liability are attributable shall be made without regard to community property laws.

- (1) A ~~claim~~request for innocent spouse relief may be filed if, at the time relief is requested, the requesting~~claiming~~ spouse is no longer married to or is legally separated from the non-requesting~~nonclaiming~~ spouse, or the requesting~~claiming~~ spouse is no longer a member of the same household as the non-requesting~~nonclaiming~~ spouse.
- (2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse may be determined by whether a spouse



rendered substantial services as a retailer of taxable items related to the liability. If neither spouse rendered substantial services as a retailer, then the attribution of the liability shall be treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(d) Written Request for Relief. To seek relief under subdivision (a) ~~these provisions~~, a ~~requesting~~ ~~claiming~~ spouse must file ~~may submit~~ a written request for innocent spouse relief setting forth the seller's permit number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) Other Equitable Relief. A requesting spouse may also be relieved of liability for any unpaid tax or deficiency under the Sales and Use Tax Law if, taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse shall be considered for other equitable relief under this subdivision after the spouse has filed a written request for innocent spouse relief under subdivision (d).

(1) Factors that may be considered for the purpose of granting other equitable relief include, but are not limited to:

(A) The requesting spouse is separated (whether legally or not) or divorced from the non-requesting spouse.

(B) The requesting spouse would suffer economic hardship if relief is not granted.

(C) The requesting spouse, under duress from the non-requesting spouse, did not pay the liability. To substantiate "duress," the requesting spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.

(D) The requesting spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.

(E) The non-requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the requesting spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the non-requesting spouse would not pay the tax.)

(F) The tax for which the requesting spouse is requesting relief is attributable to the non-requesting spouse.

(2) Factors that may be considered for purposes of denying other equitable relief include, but are not limited to:

(A) The requesting spouse will not suffer economic hardship if relief is not granted.

(B) The requesting spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the requesting spouse signed the return.

(C) The requesting spouse received a significant benefit from the unpaid tax or items causing the understatement.

(D) The requesting spouse has not made a good faith effort to comply with the Board's laws for the periods for which the requesting spouse is requesting relief or for subsequent periods of liability.

(E) The requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax.

(F) The tax for which relief is being requested is attributable to the requesting spouse.

(f) Reconsideration. A requesting spouse who is denied innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief may request that the denials of such relief be reconsidered by the Board.

(ge) Statute of Limitations. These provisions for innocent spouse relief and other equitable relief shall apply to all calendar quarters for requests filed ~~claims made~~ no later than one year after the Board's ~~board's~~ first contact with the spouse making the ~~request~~ claim. ~~Requests filed~~ Claims made after one year from the Board's ~~board's~~ first contact with the spouse making the ~~request~~ claim shall not apply to any calendar quarter that is ~~more than~~

more than five years from the return due date for nonpayment on a return, or

more than five years from the finality date on the ~~Board-issued~~ board-issued determination,

whichever is later.

No calendar quarters shall be eligible for relief under this regulation that have been closed by res judicata.

(hf) Refunds. A refund of any amounts under this regulation ~~these provisions~~ shall be subject to the requirements as set forth in Revenue and Taxation Code sections 6901 through 6908, inclusive.

(ig) This regulation shall apply retroactively to liabilities arising prior to January 1, 1994.

(h) Effective January 1, 2001, a spouse may be relieved of liability for any unpaid tax or deficiency under the Sales and Use Tax Law if, taking into account all the facts and circumstances, it is inequitable to hold the spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse may be considered



~~for equitable relief under this subdivision only after a written claim for relief as an innocent spouse has been filed pursuant to subdivision (d). A spouse whose claim for equitable relief is denied may request that the claim be reconsidered by the Board.~~

~~(1) Criteria for Equitable Relief.~~

~~(A) Factors that may be considered for the purpose of granting equitable relief include, but are not limited to:~~

- ~~1. The claiming spouse is separated (whether legally or not) or divorced from the nonclaiming spouse.~~
- ~~2. The claiming spouse would suffer economic hardship if relief is not granted.~~
- ~~3. The claiming spouse, under duress from the nonclaiming spouse, did not pay the liability. To substantiate "duress," the claiming spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.~~
- ~~4. The claiming spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.~~
- ~~5. The nonclaiming spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the claiming spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the nonclaiming spouse would not pay the tax.)~~
- ~~6. The tax for which the claiming spouse is requesting relief is attributable to the nonclaiming spouse.~~

~~(B) Factors that may be considered for purposes of denying equitable relief include, but are not limited to:~~

- ~~1. The claiming spouse will not suffer economic hardship if relief is not granted.~~
- ~~2. The claiming spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the claiming spouse signed the return.~~
- ~~3. The claiming spouse received a significant benefit from the unpaid tax or items causing the understatement.~~
- ~~4. The claiming spouse has not made a good faith effort to comply with the Board's laws for the periods for which the claiming spouse is requesting relief or for subsequent periods of liability.~~

~~5. The claiming spouse has a legal obligation under a divorce decree or agreement to pay the tax.~~

~~6. The tax for which relief is being requested is attributable to the claiming spouse.~~

~~(2) Conditions for Relief. The following conditions apply to claims for equitable relief:~~

~~(A) The statutes of limitations provided for innocent spouse claims in subdivisions 1705.1(e) and (f) also apply to requests for equitable relief.~~

~~(B) Claims for equitable relief may be filed on liabilities incurred prior to January 1, 2001, including liabilities incurred prior to January 1, 1994, as provided in subdivision (g).~~

~~(j)~~ The Board shall send notification by mail of the request~~claim~~ for innocent spouse relief from liability and the basis for that request~~claim~~ to the non-requesting~~nonclaiming~~ spouse.

~~(k)~~ Registered Domestic Partners. Pursuant to Family Code section 297.5, on and after January 1, 2005, registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. Accordingly, for purposes of this regulation, on and after January 1, 2005, domestic partners, as defined in Family Code section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as stated herein with respect to spouses.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6066, 6067, 6456 and 6901-6908, Revenue and Taxation Code; and Sections 297 and 297.5, Family Code.



Attachment B

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 4903

**4903. Innocent Spouse or Registered Domestic Partner Relief from Liability.**

(a)(1) In General.

(1) A spouse ~~requesting innocent spouse~~~~claiming~~ relief from liability for any tax, fee, or surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the following requirements are met:

(A) A liability is incurred under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, or Use Fuel Tax Law;

(B) The liability is attributable to the ~~non-requesting~~~~nonclaiming~~ spouse;

(C) The spouse ~~requesting~~~~claiming~~ relief establishes that he or she did not know of, and that a reasonably prudent person in the ~~requesting~~~~claiming~~ spouse's circumstances would not have had reason to know of, the liability; and

(D) It would be inequitable to hold the ~~requesting~~~~claiming~~ spouse liable for the liability, taking into account whether the ~~requesting~~~~claiming~~ spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

(2) For purposes of this section, the word "tax" shall mean "tax, fee, or surcharge."

(b) Benefited. Whether a ~~requesting~~~~claiming~~ spouse has benefited directly or indirectly from the liability will be determined by a review by the Board of all of the available evidence. Normal support payment is not a significant benefit for purposes of this determination. Normal support is measured relative to each family's standard of living. The ~~requesting~~~~claiming~~ spouse will not be deemed to have benefited directly or indirectly from the liability solely as a result of normal support unless his or her lifestyle significantly improved during the periods of liability. Gifts received by the ~~requesting~~~~claiming~~ spouse, or lavish or luxury purchases made by either spouse may be evidence that the ~~requesting~~~~claiming~~ spouse benefited directly or indirectly from the liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the liability occurred. For example, if a ~~requesting~~~~claiming~~ spouse receives from the other spouse an inheritance of property or life insurance proceeds which are traceable to the liability, the ~~requesting~~~~claiming~~ spouse will be considered to have benefited from that liability. Other factors considered may include desertion of the ~~requesting~~~~claiming~~ spouse by the other spouse or that the spouses have become divorced or separated subsequent to the periods of liability.

(c) Attribution. The determination of the spouse to whom items of liability are attributable shall be made without regard to community property laws.

(1) A ~~claim~~request for innocent spouse relief may be filed if, at the time relief is requested, the ~~requestingclaiming~~ spouse is no longer married to or is legally separated from the ~~non-requestingnonclaiming~~ spouse, or the ~~requestingclaiming~~ spouse is no longer a member of the same household as the ~~non-requestingnonclaiming~~ spouse.

(2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse may be determined by whether a spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer engaged in an activity or transaction that is subject to a tax administered under the laws specified in paragraph (1) of subdivision (a) and related to the liability. If neither spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer, then the attribution of the liability shall be treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(d) Written Request for Relief. To seek relief under ~~subdivision (a)~~these provisions, a ~~requestingclaiming~~ spouse ~~must file~~may submit a written request for innocent spouse relief setting forth the tax account number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) Other Equitable Relief. A requesting spouse may also be relieved of liability for any unpaid tax or deficiency under the laws specified in paragraph (1) of subdivision (a) if, taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse shall be considered for other equitable relief under this subdivision after the spouse files a written request for innocent spouse relief under subdivision (d).

(1) Factors that may be considered for the purpose of granting other equitable relief include, but are not limited to:

(A) The requesting spouse is separated (whether legally or not) or divorced from the non-requesting spouse.

(B) The requesting spouse would suffer economic hardship if relief is not granted.

(C) The requesting spouse, under duress from the non-requesting spouse, did not pay the liability. To substantiate "duress," the requesting spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.

(D) The requesting spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.



(E) The non-requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the requesting spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the non-requesting spouse would not pay the tax.)

(F) The tax for which the requesting spouse is requesting relief is attributable to the non-requesting spouse.

(2) Factors that may be considered for purposes of denying other equitable relief include, but are not limited to:

(A) The requesting spouse will not suffer economic hardship if relief is not granted.

(B) The requesting spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the requesting spouse signed the return.

(C) The requesting spouse received a significant benefit from the unpaid tax or items causing the understatement.

(D) The requesting spouse has not made a good faith effort to comply with the Board's laws for the periods for which the requesting spouse is requesting relief or for subsequent periods of liability.

(E) The requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax.

(F) The tax for which relief is being requested is attributable to the requesting spouse.

(f) Reconsideration. A requesting spouse who is denied innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief may request that the denials of such relief be reconsidered by the Board.

(ge) Statute of Limitations. These provisions for innocent spouse relief and other equitable relief shall apply to all calendar months, quarters, or years for requests filed ~~claims made~~ no later than one year after the Board's first contact with the spouse making the ~~request~~ ~~claim~~.

Requests filed ~~Claims made~~ after one year from the Board's first contact with the spouse making the ~~request~~ ~~claim~~ shall not apply to any calendar month, quarter, or year that is

more than five years from the return due date for nonpayment on a return, or

more than five years from the finality date on the Board-issued determination or similar billing document for collection of a tax or fee.

whichever is later.

No calendar months, quarters, or years shall be eligible for relief under this regulation that have been closed by res judicata.

(~~h~~f) Refunds. A refund of any amounts under this regulation~~these provisions~~ shall be subject to the requirements as set forth in the refund provisions of the applicable tax, fee, and surcharge law, as specified in paragraph (1) of subdivision (a).

(~~ig~~) This regulation shall apply retroactively to liabilities arising prior to January 1, 2008.

~~(h) A spouse may be relieved of liability for any unpaid tax or deficiency under the laws specified in paragraph (1) of subdivision (a) if, taking into account all the facts and circumstances, it is inequitable to hold the spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse may be considered for equitable relief under this subdivision only after a written claim for relief as an innocent spouse has been filed pursuant to subdivision (d). A spouse whose claim for equitable relief is denied may request that the claim be reconsidered by the board.~~

(1) Criteria for Equitable Relief.

~~(A) Factors that may be considered for the purpose of granting equitable relief include, but are not limited to:~~

- ~~1. The claiming spouse is separated (whether legally or not) or divorced from the nonclaiming spouse.~~
- ~~2. The claiming spouse would suffer economic hardship if relief is not granted.~~
- ~~3. The claiming spouse, under duress from the nonclaiming spouse, did not pay the liability. To substantiate "duress," the claiming spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.~~
- ~~4. The claiming spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.~~
- ~~5. The nonclaiming spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the claiming spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the nonclaiming spouse would not pay the tax.)~~
- ~~6. The tax for which the claiming spouse is requesting relief is attributable to the nonclaiming spouse.~~



~~(B) Factors that may be considered for purposes of denying equitable relief include, but are not limited to:~~

- ~~1. The claiming spouse will not suffer economic hardship if relief is not granted.~~
- ~~2. The claiming spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the claiming spouse signed the return.~~
- ~~3. The claiming spouse received a significant benefit from the unpaid tax or items causing the understatement.~~
- ~~4. The claiming spouse has not made a good faith effort to comply with the board's laws for the periods for which the claiming spouse is requesting relief or for subsequent periods of liability.~~
- ~~5. The claiming spouse has a legal obligation under a divorce decree or agreement to pay the tax.~~
- ~~6. The tax for which relief is being requested is attributable to the claiming spouse.~~

~~(2) Conditions for Relief. The following conditions apply to claims for equitable relief:~~

~~(A) The statutes of limitations provided for innocent spouse claims in subdivisions (e) and (f) also apply to requests for equitable relief.~~

~~(B) Claims for equitable relief may be filed on liabilities incurred prior to January 1, 2008, as provided in subdivision (g).~~

~~(j)~~ The Board shall send notification by mail of the requestclaim for innocent spouse relief from liability and the basis for that requestclaim to the non-requestingnonclaiming spouse.

~~(k)~~ Registered Domestic Partners. Pursuant to Family Code section 297.5, registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. Accordingly, for purposes of this regulation, domestic partners, as defined in Family Code section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as stated herein with respect to spouses.

Note: Authority cited: Sections 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7657.5, 8101-8131, 8880, 9151-9156, 11408.5, 11551-11555, 30285, 30361-30384, 32258, 32401-32407, 38454.5, 38601-38607, 40105, 40111-40117, 41099, 41100-41106, 43159.1, 43159.2, 43451-43456, 45158, 45651-45656, 46159, 46501-46507, 50112.6, 50139-50142.2,

55045.1, 55221-55226, 60210.5 and 60501-60512, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.



Attachment C

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 5240

**5240. Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief.**

(a) Who May Request Relief. A divorced or separated individual may file a request for innocent spouse relief with the Board regarding taxes and fees imposed under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Diesel Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, and Fee Collection Procedures Law.

(b) Request Requirements. A request for innocent spouse relief must be:

- (1) In writing.
- (2) Signed and dated by the individual requesting relief.
- (3) Specifically request innocent spouse relief.
- (4) Identify the tax or fee from which relief is sought.
- (5) Contain all of the information requested on Form BOE-682-A, including a specific explanation as to why the individual requesting relief believes he or she should not be held responsible for the liability at issue.

(c) Use of Forms. A request for innocent spouse relief prepared and filed on a completed Form BOE-682-A satisfies the requirements of subdivision (b).

(d) Limitation Period. A request for innocent spouse relief must be filed with the Board within the applicable time periods provided in California Code of Regulations, title 18, section 1705.1, ~~subdivision (e)~~, or section 4903, ~~subdivision (e)~~.

(e) Filing Requests. A request for innocent spouse relief or related document may be filed electronically under this section if a copy of the document is transmitted to the Offer in Compromise Section in accordance with instructions provided on the Board's website at [www.boe.ca.gov](http://www.boe.ca.gov). Requests for innocent spouse relief may be mailed to the Offer in Compromise Section at the following address:

OFFER IN COMPROMISE SECTION, MIC 52  
STATE BOARD OF EQUALIZATION  
P.O. BOX 942879  
SACRAMENTO, CA 94279-0052

A request for innocent spouse relief and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or submitted to a collector that is already assigned to the account at issue.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152 and 55301, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6 and 55045.1, Revenue and Taxation Code.



Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 5241

**5241. Acknowledgement and Review of Requests for Innocent Spouse Relief.**

(a) ~~Acknowledgment~~Review. When the Offer in Compromise Section receives a request for innocent spouse relief, it will:

(1) Send the individual requesting relief an acknowledgement letter containing the contact information for the Offer in Compromise Section, and include a questionnaire and financial statement for the individual requesting relief to complete and return.

(2) Inform the non-requesting spouse that the request has been filed and the basis for the request, and permit the non-requesting spouse to submit information to support or counter the request.

(3) ~~Evaluate the merits of the request.~~

(4) ~~Request additional documentation from the individual requesting relief, if necessary.~~

(b) Review. The Offer in Compromise Section will review a request for innocent spouse relief to determine whether the individual requesting relief is eligible for innocent spouse relief or other equitable relief from all the liabilities included in his or her request, as provided in California Code of Regulations, title 18, section 1705.1 or section 4903. The Offer in Compromise Section may request additional information from the individual requesting relief if necessary to complete such review, including requesting additional information in the acknowledgement letter.

(c) Written Findings. Once its review is completed, the Offer in Compromise Section will mail the individual requesting relief a letter granting or denying innocent spouse relief and other equitable relief, and explaining why such relief was granted or denied. If the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in a request for innocent spouse relief, the letter shall include instructions about how to request reconsideration.

~~(b) Granted Request for Innocent Spouse Relief. If the Offer in Compromise Section approves a request for innocent spouse relief, it will prepare and send the individual who requested relief a letter explaining the relief that was granted.~~

~~(c) Denied Request for Innocent Spouse Relief. If the Offer in Compromise Section denies a request for innocent spouse relief, it will:~~

~~(1) Prepare and send the individual requesting relief a letter explaining why the request was denied; and~~

~~(2) If it appears that the individual requesting relief might be eligible for other equitable relief as provided in California Code of Regulations, title 18, section 1705.1, subdivision (h), or section 4903, subdivision (h), the Offer in Compromise Section will include a~~

questionnaire and financial statement for the individual requesting relief to complete and return.

(d) Requests for Other Equitable Relief. If the individual requesting relief returns a completed questionnaire and financial statement, the Offer in Compromise Section will review the documents to see if other equitable relief is warranted using the factors provided in California Code of Regulations, title 18, section 1705.1, subdivision (h), or section 4903, subdivision (h). Once this review is completed, the Offer in Compromise Section will mail the individual requesting relief a letter granting or denying equitable relief and explaining why such relief was granted or denied.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152 and 55301, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6 and 55045.1, Revenue and Taxation Code.



Attachment E

Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 5242

**5242. Requests for Reconsideration by the Board.**

(a) If the Offer in Compromise Section denies both innocent spouse relief and a request for other equitable relief as to any liability included in a request for innocent spouse relief is denied, the individual requesting relief may request that the denials be reconsidered by the Board at a Board hearing as provided in California Code of Regulations, title 18, section 1705.1, ~~subdivision (h)~~, or section 4903, ~~subdivision (h)~~. A request for a Board hearing may be denied on a request for reconsideration ~~other equitable relief~~, however, requests will be liberally granted.

(b) A Board hearing may be requested by following the instructions contained in the ~~denial~~ letter described in section 5241, subdivision (c~~d~~).

(c) If a request for a Board hearing is granted, the individual requesting relief may be required to participate in an appeals conference with the Appeals Division prior to the Board hearing.

Note: Authority cited: Section 15606, Government Code; and Sections 7051, 8251, 9251, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152 and 55301, Revenue and Taxation Code. Reference: Sections 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6 and 55045.1, Revenue and Taxation Code.